

# Question: Can a government body request and receive payment for the actual costs incurred in retrieving and reviewing public records prior to release or copying of the records?



*Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.*

**ANSWER:** Iowa Code section 22.3(2) states that all expenses of the examination and copying of a public record request can be charged to the requestor. In addition, the lawful custodian can charge a reasonable fee to supervise the examination and copying of the request. This paragraph also states that the fee shall not exceed the actual cost of providing the service. Such actual costs “shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.” In addition, the third sentence in Iowa Code section 22.3(1)

reads: “... Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester upon receipt of the request...”

Read together, the two paragraphs are interpreted to allow a government body to recoup the actual costs associated with the retrieval, review, and release of public records. The last sentence in Section 22.3(2) supports this interpretation. There would be no reason to exclude employment benefits from the term ‘actual costs’ if this section was interpreted to allow

only the paper and printing costs of a record release. Part of the process of fulfilling or supervising a record release requires someone with adequate ability to review the records to insure that the proper records are retrieved for the request and to guard against the release of confidential records or parts thereof.

In 1998, the Iowa Supreme Court upheld this interpretation in *Rathman v. Board of Directors of the Davenport Community School District*, 580 N.W.2d 773 (Iowa 1998). The IPIB incorporated this decision into a dismissal order entered on December 18, 2014, in 14FC:0075, *In re Alysia Santo*. According to Rathman:

*“Reading the statute as a whole, we conclude that the provisions of section 22.3 generally contemplate reimbursement to a lawful custodian of public records for costs incurred in retrieving public records. We find the phrase “all expenses of such work” to be especially significant and indicative of the legislature’s intent that a lawful custodian has the authority to charge a fee to cover the costs of retrieving public records. Thus, access to public records does not necessarily mean “free” access. We recognize that permitting entities covered under chapter 22 to charge members of the public a fee to cover the cost of retrieving public records does, to some extent, limit public access to public records. While the legislature did not intend for chapter 22 to be a revenue measure, at the same time it did not intend for a lawful custodian to bear the burden of paying for all expenses associated with a public records request.”*

## IPIB FACTS AND FIGURES

During the month of November 2016, 57 contacts were made with the Iowa Public Information Board office.

<u>TYPE</u>	<u>NOVEMBER 2016</u>	<u>2016 YEAR-TO-DATE</u>
Formal complaints	7	105
Advisory opinions	0	12
Declaratory orders	0	1
Informal complaints	17	90
Informal requests	31	592
Miscellaneous	2	13
<b>TOTAL:</b>	<b>57</b>	<b>813</b>

### Who can contact the IPIB and how long does it take?

Any person can contact the IPIB for assistance by telephone (515-725-1781), by email, or on the website. So far, in 2016, 813 identifiable people have contacted the IPIB. Of these, 44% were private citizens, 43% were government officials or employees, and 13% were members of the media.

In the month of November 2016, 69% of the incoming contacts were resolved the same day, 15% were resolved in one to five days, and 16% were resolved in six or more days.